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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,992	12/29/2001	Sherif Safwat	2194DIV1	6026

7590 12/16/2003

A Professional Corporation  
Post Office Box 64150  
Sunnyvale, CA 94088-4150

EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/036,992

Applicant(s)

SAFWAT et al.

Examiner

KURT ROWAN

Art Unit

3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 3, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 124-138 is/are pending in the application.
- 4a) Of the above, claim(s) 124-132 and 136-138 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 133 and 134 is/are rejected.
- 7) ☒ Claim(s) 135 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of Species of Figs. 37-38 in Paper No. 6 is acknowledged.
2. Claims 124-132, 136-138 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 U.S.C. § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 133, 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haller for substantially the same reasons stated in the last Office Action.

The patent to Haller shows a net which is capable of being drawn thru the water with a mesh design having a first right hand cell bar 60 and a second left handed cell bar 59 which would inherently provide lift to the net to increase the net volume and improve the shape of the net. Haller disclose the mesh design for gill nets, but it would have been obvious to employ the net design for other types of nets such as a trawl net since the function is the same. Haller contemplates a plurality of interconnected mesh cells each having at least two cell bars that are constructed and arranged so that the two cell bars would intersect a velocity vector at an acute angle. Haller shows the two cell bars being formed with a plurality of cambered sections 57, 58 and 59, 60 forming two product strands that are oriented and configured so that movement of cell bars thru the water relative to the velocity vector creates a pressure differential across the cambered sections to establish a lift vector on the cell bar in a predetermined direction. Cambered section 56 shows a corkscrew-shaped member in Fig. 2. In reference to claims 133, 134, Haller does not disclose that the net is for a trawl use, but it would have been obvious to employ the net of Haller in a trawl net since Haller disclose that the net is for fishing.

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***Allowable Subject Matter***

6. Claims 135 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

7. The declaration under 37 CFR 1.132 filed May 30, 2003 is insufficient to overcome the rejection of claims 133-134 based upon Haller as set forth in the last Office action because: the declaration refers only to the invention, not to the claims.

It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. As such the declaration does not show that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

***Response to Arguments***

8. Applicant's arguments filed October 3, 2003 have been fully considered but they are not persuasive. Applicant argues that the declaration overcomes the rejection based on Haller. Applicant needs to resubmit a new declaration referencing the claims of the present application. At that point the examiner will consider the merits of the declaration. In response to applicant's

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argument that there is no suggestion to modify the reference, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the knowledge generally available to one of ordinary skill in the art. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

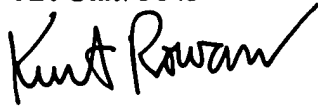
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a large, sweeping "K" and a long, horizontal stroke at the end.

KURT ROWAN

PRIMARY EXAMINER

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December 15, 2003